

EIKM

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
INFORMAL BRIEF

No. 17-6557, Frederick Banks v. Dr. Heather Ross, et al
 5:16-ct-03185-FL

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 U.S. COURT OF APPEALS
 FOURTH CIRCUIT

1. Declaration of Inmate Filing

An inmate's notice of appeal is timely if it was deposited in the institution's internal mail system, with postage prepaid, on or before the last day for filing. Timely filing may be shown by:

- a postmark or date stamp showing that the notice of appeal was timely deposited in the institution's internal mail system, with postage prepaid, or
- a declaration of the inmate, under penalty of perjury, of the date on which the notice of appeal was deposited in the institution's internal mail system with postage prepaid. To include a declaration of inmate filing as part of your informal brief, complete and sign the declaration below:

| Declaration of Inmate Filing | |
|---|---------------------|
| Date NOTICE OF APPEAL deposited in institution's mail system: <u>4/14/17</u> | |
| I am an inmate confined in an institution and deposited my notice of appeal in the institution's internal mail system. First-class postage was prepaid either by me or by the institution on my behalf. | |
| I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621). | |
| Signature: <u>[Signature]</u> | Date: <u>5/1/17</u> |

2. Jurisdiction

Name of court or agency from which review is sought: US District Court ED of NC

Date(s) of order or orders for which review is sought: 4/11/17

3. Issues for Review

Use the following spaces to set forth the facts and argument in support of the issues you wish the Court of Appeals to consider. The parties may cite case law, but citations are not required.

Issue 1.

The Prison Litigation Reform Act "three strikes" provision did not apply to plaintiff because he is a civilly committed person under 18 USC 4241(d) at the time he brought the mandamus petition.

Supporting Facts and Argument.

28 USC 1915(c)-s "Three Strikes" provision did not apply to plaintiff who was civilly committed at the time he filed the action under 18 USC § 4241(d). The district court erred in determining the PLRA applied. See Banks v. Hornak No. 16-6981 (4th Cir.) at Brief for Petitioner - Appellant and Reply Brief of Petitioner (citing cases) All in violation of 5th Amendment due process.

Issue 2. The Court erred in determining petitioner received a "copy" of Dr. Ross's mental evaluation report.

Supporting Facts and Argument.

The Court erred in determining that petitioner received a physical copy of Dr. Ross's mental evaluation report. Petitioner as Judge Hornak's Order stated only received access to the report he did not receive the report.

In addition Dr. Marquez's restoration report petitioner had not even seen. The Appeals Court should order both Dr. Ross and Dr. Marquez and respondents to provide a copy of these reports and a copy of any and all documents, emails, and writings and materials including notes that were used or prepared concerning these reports. In addition because petitioner has served over 4 months more than his top end guideline range this Court should release him from unlawful confinement. All in violation of 5th Amendment Due Process.

Supporting Facts and Argument.

Issue 4.

Supporting Facts and Argument

4. Relief Requested

Identify the precise action you want the Court of Appeals to take:

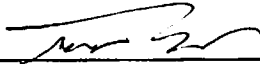
The Court should order PR. Ross, DR. Marquez and Respondents to furnish petitioner with a copy of their mental evaluation reports and supporting documents. The order and judgment of the District Court should be reversed and remanded and vacated. Oral argument should be ordered and counsel appointed along with all other requested or warranted relief. Petitioner should be discharged from custody.

5. Prior appeals (for appellants only)

A. Have you filed other cases in this court? Yes ☒ No ☐

B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

Banks v. Hornak, No. 16-6981 (4th cir.) still pending


Signature
[Notarization Not Required]

Frederick Banks
[Please Print Your Name Here]

CERTIFICATE OF SERVICE

I certify that on 5/1/17 I served a copy of this Informal Brief on all parties, addressed as shown below:

PR. Heather Kess, Dr. Allissa Marquez, FBOP, Thomas Hardeman, Robert Celsan, Scott Smith, Brenden Conway, Paul Bull, Mark Hornak, Adrian Kee, Judge Pesto, Ronald W. Hayward, Vera KERRY Fisher, Jay Flowers Cinti, Cynthia Reed Eddy, Timothy Pinching, Sean Langford, Robert Werner, James Comer, David Anderchak, Marit System Protection Board, Rebecca Keli Howard, US DOJ, David Hector, FBI, US Marshall Service, C/O Office of the US Atty, 4000 US Courthouse, 1700 Grant St. Pittsburgh, PA 15219 and FMC, PO Box 1600, Butler, NC 27509

Signature

NO STAPLES, TAPE OR BINDING PLEASE

Frederick Banks, 05711068

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INSPECTED

Patricia S. Connor, Clerk
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